UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

MATHESON MAIL TRANSPORTATION, INC.

Employer

and

JOHN DALY,

Petitioner

and Case 20-RD-2430

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 624/CTW

Incumbent Union

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

LOCAL 70/CTW

Incumbent Union

DECISION AND DIRECTION OF ELECTION

Matheson Mail Transportation, Inc. herein the Employer, is a corporation with an office and place of business in Elk Grove, California, and with facilities located throughout California, including at Petaluma and Oakland, the two facilities involved in the instant case. It is engaged in the business of providing over-the-road trucking services under various contracts with the United States Postal

Service (USPS) within California and to Reno, Nevada.

The instant decertification petition is filed for a proposed unit comprised of all drivers employed by the Employer at its North Bay locations, excluding supervisors and managers. The Employer's only North Bay location is at Petaluma, California. The Petitioner and the Employer contend that the petitioned-for unit is the appropriate unit within which to conduct a decertification election. The International Brotherhood of Teamsters, Local 624/CTW (Local 624) and the International Brotherhood of Teamsters, Local 70/CTW (Local 70), herein jointly referred to as the Unions, take the position that the only appropriate unit within which to conduct a decertification election is the unit coextensive with the existing contractual unit, which is comprised of drivers employed at the Employer's Alameda, Sonoma and Marin County facilities. The contractual unit currently covers drivers at both the Petaluma facility in Sonoma County, and at the Employer's Oakland facility in Alameda County; no drivers are employed in Marin County. The issue in dispute is whether the drivers at the Petaluma and Oakland facilities have been merged into a single unit.

As discussed below, generally the unit in a decertification election must be coextensive with the certified or recognized unit, and I find that the recognized unit in this case is a unit which includes drivers at both the Petaluma and Oakland facilities. I base this finding on the recognition language in the parties' current collective-bargaining agreement, pursuant to which the Employer clearly recognizes both Local 624 and Local 70 as the single representative of a unit that includes drivers at both facilities. In addition, I base my finding on the long history of collective-bargaining in the same unit and on community of interest factors supporting the appropriateness of this merged unit. Accordingly, I have decided to direct a decertification election in a unit that includes drivers at both facilities and to give Petitioner a brief period within which to produce a sufficient showing of interest to support an election in this unit.

The Employer's Operation. The record shows that the Employer was founded in 1964 by R.B. Matheson, who acquired a mail hauling company and began bidding for contracts with USPS. The Employer is currently part of a group of five related Matheson companies. The parent company of this group is Matheson Trucking, Inc. (Matheson Trucking), which handles corporate accounting, human resources, internet technology, and truck repair services for its four subsidiaries: Matheson Fast Freight, Inc. (Fast Freight), Matheson Flight Extenders, Inc. (Flight Extenders), Matheson Postal Services, Inc. (Matheson Postal) and the Employer. Fast Freight primarily handles "less-than-load" trucking in California and Nevada. Flight Extenders has contracts with USPS, DHL and UPS, to handle the interchange of mail and packages at approximately 16 airports and other locations. Matheson Postal has contracts with USPS and operates throughout the United States. Both Matheson Postal and the Employer perform work only under USPS contracts and the companies are functionally indistinguishable. The Employer was formed in 2000 as a subsidiary of Matheson Postal for the sole purpose of employing drivers covered under union contracts in order to simplify the administration of benefit programs.[1] Matheson Postal employs the supervisors of the Employer's drivers at its Petaluma and Oakland facilities and also employs nonunion drivers at several other Employer facilities. Matheson Postal is divided for administrative purposes into regions, with the Bay Area region covering facilities at Oakland, Petaluma, San Jose and San Francisco. In essence, the Employer exists as a single region, because the thirty drivers at the Petaluma facility and the sixty drivers at the Oakland facility are the only drivers working under a union contract at any of the Matheson group of companies and they are the only employees of the Employer.

[1] All references to the Employer with regard to occurrences that predated its formation in 2000 refer to the pertinent Matheson company that constituted the Employer's predecessor.

The Petaluma and Oakland facilities each have a separate local supervisor. Robert Conley is the supervisor at the Petaluma facility and Marco Barrigan is the supervisor of both the Oakland and San Francisco facilities. Conley and Barrigan are responsible for assigning work and routes, granting time off, scheduling vacations, handling the posting and bidding of work, issuing verbal and written warnings and handling local grievance matters. Both report to Regional Manager Richard Rightmire, whose office is at Matheson's Oakland regional office. Rightmire is responsible for budgetary matters, review of the financial performance of each facility and dealing with USPS. Rightmire reports to Matheson's Director of Operations, who reports to the General Manger, who reports to the COO/CFO, who reports to the Employer's President, Mark Matheson. Michael Wilbourn, the Director of Human Resources for Matheson Trucking, the parent corporation for the Employer, handles all human resource matters for both facilities. Wilbourn's office is located in Red Bluff, California.

Certifications. Local 70 was certified on November 14, 1967, as the exclusive collective-bargaining representative of Matheson Postal employees in Case 20-RC-7786, in the following unit:

> All truck drivers of the Employer working out of its facility at the Oakland Army Terminal, Oakland, California; excluding all office clerical employees, guards and supervisors as defined in the Act.

Local 70 was subsequently certified on April 16, 1993, in Case 32-RC-3585, in the following unit of Flight Extenders employees:

> All full-time and regular part-time drivers employed by the Employer at its 2500 Poplar Street, Oakland, California facility excluding: all office clerical employees, guards and supervisors as defined in the Act.

The drivers' unit certified at the Oakland Army Terminal relocated in the early 1990s to the Poplar Street, Oakland address, and the employees in the certified Flight Extenders' unit at the Poplar Street facility subsequently became employees of the Employer. There is no evidence that a union has ever been certified to represent a unit of drivers at the Petaluma facility or at any other facility in Marin, Sonoma or Alameda counties.

Collective-Bargaining History. The record contains a series of 14 successive joint collective-bargaining agreements, covering the drivers of the Employer and its predecessors, which chronicle the Employer's 38-year history of joint collective-bargaining with Locals 624 and 70, and with other Teamsters' locals prior to 1987.[2] The first six of these bargaining agreements show that between 1968 and 1986, the Employer's predecessors had successive joint contracts with Teamster Locals 624, 70 and 980, that contained recognition language referring to all three unions as "the Union" representing "all mail drivers and helpers" of the Employer. In addition, from 1970 to about 1977, these joint contracts also included Teamsters Local 137, which was recognized by an Employer predecessor as the representative of the drivers at its Marysville facility. Each of these Teamsters' locals had geographic jurisdiction based on where the respective work was performed, in this case based on where the USPS/Employer routes originated. From 1968 until 1986, under six joint agreements with the recognition language described above, Local 624 had geographic jurisdiction over work performed out of the Employer's San Rafael facility in Marin County; Local 70 had geographic jurisdiction over work performed out of the Oakland Army Terminal in Alameda County; Local 980 had geographic jurisdiction over the work performed out of the Employer's Santa Rosa facility in Sonoma

[2] With the exception of the two most recent joint agreements, which have been two-year agreements, all of these joint collective-bargaining agreements had terms of three-years with annual wage and benefit reopeners.

County; and from 1970 to 1977, Local 137 had geographic jurisdiction over work performed out of the Employer's Marysville facility.

In about 1986, the Employer relocated its San Rafael and Santa Rosa facilities to a new Petaluma facility and Local 624 took over representation of all of the drivers at that facility. As a result, after 1986, Local 980 was no longer a party to any contracts with the Employer. From 1986 to 1997, the Employer and Locals 624 and 70 were parties to four successive three-year joint agreements that referred to both Unions as "the Union," representing "all mail truck drivers and helpers" of the Employer.

As indicated above, in the early 1990s, the Employer opened its Poplar Street, Oakland facility and transferred its Oakland Army Terminal drivers to that location. In 1993, Local 70 was certified in a unit of drivers of Flight Extenders who had transferred from the USPS bulk mail facility in Oakland to the Poplar Street location. After this certification, the Flight Extenders' employees in this unit were transferred to the Employer's predecessor, and they were covered by successive joint agreements.

Commencing with the eleventh joint agreement (1997-2000), while the recognition clause continued to identify Locals 624 and 70 jointly as "the Union," the recognition language was changed to the following:

> The Employer recognizes the Union as the sole and exclusive representative of its drivers employed by the Employer at its Alameda County and Sonoma & Marin
>
> county facilities.

The 2000-2003 joint agreement contained the same recognition language.

In 2002, USPS notified the Employer that it would henceforth honor only those wage adjustments that were made at the mid-point of the four-year mail haul contracts between USPS and the Employer. According to the Employer's Human Resources Director, Michael Wilbourn,

in 2002, when representatives of Locals 624 and 70 and the Employer sat down to discuss wage adjustments to the 2000-2003 joint agreement, they discussed the new USPS policy and the fact that certain of the nine mail haul contracts covered by the joint agreement ended on different dates than other mail haul contracts covered by the agreement. Wilbourn testified that Locals 624 and 70 and the Employer jointly decided that in order to synchronize the dates of the collective-bargaining agreements with the USPS mail haul contracts for wage adjustment purposes, they would renegotiate a new joint agreement for a two-year term that would cover only seven of the nine mail haul contracts, and that they would place the other two mail haul contracts, which fell only within Local 70's geographic/work jurisdiction, under a separate exclusive agreement between the Employer and Local 70. Accordingly, in May 2002, Locals 624 and 70 and the Employer jointly entered into a thirteenth joint agreement, effective from June 30, 2002, until June 29, 2004, which contained the same recognition language as the prior two contracts but which identified seven mail haul routes by number in the agreement's work jurisdiction article.[3] In May 2003, the Employer and Local 70 entered into a separate exclusive agreement, effective from June 30, 2003, until June 29, 2007 (the Local 70 Agreement) with the following recognition language:

> The Employer recognizes the Union as the sole and exclusive representative of its drivers employed by the Employer at its Alameda County facility.

In its work jurisdiction article, the Local 70 Agreement listed the two mail haul routes that were exclusively within Local 70's geographic jurisdiction that had not been covered under the 2002-2004 joint agreement.[4] Attached to the Local 70 Agreement is a "Letter of

[3] The seven route numbers listed in the 2002-2004 joint agreement are 94690, 94890, 94896, 94930, 949L2, 95412 and 95438.

[4] The routes covered by the Local 70 Agreement were Routes 94532 and 94533. In 2005, Local 70 and the Employer added a third new mail haul route, (# 94570), to the scope of the work covered by that agreement.

Understanding," entitled "Language Additions and Modifications," signed by representatives of the Employer and Local 70, which states as follows:

> The Company and the Union currently have two collective-bargaining agreements. One agreement is exclusively with Local 70 (Exclusive) and the other is a joint agreement with Locals 70 and 624 (Joint). The Company has employees who work under both collective-bargaining agreements. In an effort to ease administration and to ensure that similar work rules are maintained, the Company and the Union agree to the following:
>
> - All additions and modifications to language in the Joint collective-bargaining agreement will apply and become part of the Exclusive collective-bargaining agreement.
>
> - Language changes in both collective-bargaining agreements will become effective with the ratification of the Joint collective-bargaining agreement.
>
> This letter of understanding is not intended to preclude discussion of issues during the term of the contract or during re-openers. It is intended to restrict and define the timing of the language changes to the Exclusive collective-bargaining agreement.

The fourteenth and most recent joint agreement (herein called the Current Joint Agreement), which is effective from June 30, 2004, until June 29, 2006, is between the Employer and Locals 624 and 70, as "the Union," with the same recognition language as in the prior three joint agreements. The same seven mail haul routes listed in the work jurisdiction article contained in the 2002-2004 joint agreement are included in the work jurisdiction article of the Current Joint Agreement.

The Process of Collective-Bargaining. Each of the joint collective-bargaining agreements from 1968 to date has resulted from joint negotiations between Locals 624 and 70 and the Employer. Indeed, even the Local 70 Agreement was the product of a joint agreement in 2002 between both Unions and the Employer.

The parties stipulated that each Local's practice has been to send a separate re-opener letter to the Employer to commence bargaining on a new contract. In 2006, however, this practice changed, when the Employer sent an e-mail to Local 624 and Local 70 to reopen

negotiations, attaching a timeline for such negotiations in order to meet new USPS guidelines for the timely submission of contracts to USPS. Prior to negotiations, each Union formulates its own separate proposals to present to the Employer. Local 624 Business Representative Ralph Miranda testified that a primary spokesperson is chosen to speak for both Unions and that the spokesperson is usually a representative of Local 70 because Local 70 represents a majority of unit employees. However, representatives of both Unions are always present at negotiations. Miranda testified that prior to negotiations with the Employer, he discusses Local 624's proposals with the Local 70 spokesperson. Negotiations have generally been held in the conference room of Local 70's office in Oakland. The record shows that when bargaining begins, each Union presents its own separate proposals to the Employer.[5] Employer Human Resources Director Wilbourn testified that he could not recall having been presented with a joint proposal from both Unions at the beginning of negotiations, but that at times he has received an opening proposal from only one Union and negotiations have commenced using that proposal. According to Wilbourn, the parties begin negotiations by going through each Union's proposals or by going through the prior contract, one section at a time, and discussing the proposed changes to each section. Miranda testified that Local 70's spokesperson presents the proposals of both Unions and the Local 624 representative interjects to give fuller explanations of Local 624's proposals. The Employer then responds with a single counterproposal to both Unions' proposals.[6] According to Wilbourn and Miranda, the Unions typically do not present separate proposals on most issues after the first negotiating session and there is no evidence that the

[5] Although Local 624 Business Representative Miranda testified that Local 624 has at times sent its proposals to the Local 70 spokesperson so the spokesperson could review and/or combine them into one single proposal to the Employer, the record contains no joint opening proposals from both Unions.

[6] The Employer also sends its communications regarding the scheduling of subsequent negotiating sessions to both Unions.

Unions have presented conflicting proposals. Wilbourn testified that the Union representatives do not take contrary positions at the bargaining table. According to Miranda, the Union representatives iron out their differences at Union caucuses and then present a united front at the bargaining table. He acknowledged that an exception to this occurs with regard to local operational issues, such as seniority and bidding. As discussed below, each Union negotiates separately on such local operational matters and reaches separate side agreements with the Employer.

Wilbourn testified that he has been informed by representatives of the Unions during negotiations that they lack the authority to enter into a final agreement without first having their membership ratify the contract. Miranda testified that when a tentative agreement is reached with the Employer, each Union submits the contract to its respective membership for ratification. Local 624 then sends the results of its ratification vote to Local 70 to be pooled with Local 70's vote, and the combined results determine whether the contract is ratified. Miranda testified that because Local 70 has a much larger membership, it is conceivable that a contract could be ratified even though a majority of Local 624's members voted against ratification. However, Miranda was not aware that this had ever happened.

According to Wilbourn, there have been occasions when the Employer has been notified of a ratification vote by one of the Unions. For example, Wilbourn testified that on May 31, 2006, he had been notified by Local 70 that its membership had ratified the tentative agreement signed by Local 70 and the Employer on May 25, 2006. [7] According to Wilbourn, Local 624 had not signed the tentative agreement reached with Local 70 on May 25. Wilbourn testified that Local 624 Business Agent Bob Carr had instead informed him at the May 25, 2006, meeting that

[7] The record does not reflect the actual vote of the Local 70 membership in ratifying the new agreement.

he did not believe Local 624's membership would ratify the contract; that if it did, that wouldn't happen until mid-July; that he needed to give ten days' notice prior to the ratification vote; and that "even a strike wasn't out of the realm of things." Local 624's Shop Steward, Luis Intriago, testified that as of the June 5, 2006, hearing in this matter, Local 624 had not yet conducted a ratification meeting.

Wilbourn further testified with regard to the 2006 negotiations, because the Department of Labor (DOL) requires 30 days notice to review collective-bargaining agreements before the new rates under those agreements can be put into effect, the Employer and Local 70 have drafted a letter of understanding stating that the new agreement would go into effect as long as the contract is ratified by Local 70's membership and DOL accepts the provisions of the new contract as timely. Wilbourn testified that as of the date of the hearing, the Employer had not received a response from DOL regarding its review of the contract.

Separate Terms and Conditions Under the Same Joint Agreements. The Employer pays its drivers the prevailing wage rate as established by the Department of Labor, which differs between Oakland and Petaluma. Negotiations between the Employer and the Unions thus primarily involve how the prevailing wage/benefit package will be allocated between wages and health and welfare and pension contributions. The two Locals have different wage rates and wage/benefit allocations. However, such terms are agreed to jointly by both Unions.

Separate Side Agreements. The record contains several documents showing separate side agreements between the Employer and each Union. For Local 624, these include: 1987 and 1988 letters of understanding on wage increase and pension contribution increase amounts; 1992, 1996 and 1997 memorandums of understanding regarding seniority and layoffs and the bidding procedure; a 1992 letter of understanding notifying the Employer that the extension agreement

with Local 624 was terminated and that negotiations were at an impasse. The last letter is similar to a 1992 letter from Local 70 to the Employer to the same effect. For Local 70, the record contains the following side agreement documents: 1971 and 1980 agreements between Local 70 and the Employer concerning pay for drivers stranded during storms and extra pay for drivers having to deal with bad driving conditions; a 1974 addendum agreement between Local 70 and the Employer, concerning Local 70's jurisdiction over work transferred to a new location and the right of unit members to bid on such work; and a 1987 Letter of Understanding between the Employer and Local 70, setting out changes to the hiring hall fee date and the effective date of the health and welfare plan and establishing changes in the effective date of the agreement.

Seniority. Although the Current Joint Agreement and prior joint agreements contain a seniority and layoff provision that calls for the Employer to maintain a master seniority list for all employees covered by the agreement and setting forth bidding procedures, the record shows that the Petaluma and Oakland facilities have always maintained separate seniority lists for purposes of layoffs, recalls, bidding, vacation scheduling, etc., and that each Union separately handles the administration of seniority and bidding procedures at each facility. Thus, as indicated above, the record includes separate side agreements between the Employer and Local 624 governing seniority and layoffs.

Grievance Matters. Likewise, although the Current Agreement and prior joint agreements include a provision that governs grievances, the record shows that grievances are usually handled separately by each Union for the corresponding drivers at the Petaluma and Oakland facilities. Each facility has its own shop steward and there is no chief steward with authority over grievance handling at both facilities. Miranda testified that Local 624 usually does not consult with Local 70 on grievance matters involving Petaluma drivers unless the issue

affects drivers at both facilities and/or involves an interpretation of the joint agreement. For the Employer, grievance matters at each facility are handled by the local supervisor. However, if a grievance is processed beyond the local facility level, it is handled by the Employer's central Human Resources office.

Community of Interest Evidence. The Petaluma and Oakland facilities are about 50 to 60 miles apart. There is no evidence that the drivers at Petaluma and Oakland have different skills, qualifications, training or licensing. Nor is there any evidence that they perform different types of work or use different types of equipment. The drivers at the Petaluma and Oakland facilities have separate immediate supervision. However, the budget for both facilities is handled at the regional level and labor policies are formulated for both facilities at the Human Resources office of the Employer's parent company, Matheson Trucking. Human Resources must also approve all disciplinary actions involving suspensions or terminations and it handles all grievances for both facilities that are processed beyond the local level. In addition to human resources functions, all accounting, payroll, IT, and truck repair services for both facilities are handled by the Employer's parent corporation, Matheson Trucking.

With regard to interchange between employees at the Petaluma and Oakland facilities, Petaluma Driver/Local 624 Shop Steward Luis Intriago gave several examples of employee interchange occurring during the course of his employment with the Employer since 2004. These include a female driver from Oakland whom Intriago trained on a Petaluma route and who drove routes out of the Petaluma facility; a driver from Oakland whom Intriago met on the dock at the Petaluma facility who normally drove an Oakland to San Francisco route, but who was driving a San Francisco to Petaluma route to cover for an absent San Francisco driver; a Petaluma driver, Ray Perry, who twice drove an Oakland to Reno route in order to earn

additional pay; a Petaluma Driver, Mao Chip, who drove routes out of the Oakland facility in order to earn additional pay; and a former Petaluma Driver, Joe (last name not disclosed), who drove an Oakland to Seattle priority route. Intriago further testified that Petaluma Supervisor Conley had asked him to drive the Oakland to Reno route in July 2004, and an Oakland to Seattle route in December 2004, and he had declined both requests and those trips had been made by other Petaluma drivers.

Analysis. It is well established that generally the unit in a decertification election must be coextensive with the recognized or certified bargaining unit. See *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990); *Campbell Soup Co.*, 111 NLRB 234 (1955). In some cases, the issue arises as to whether a group of employees, initially certified by the Board or recognized through bargaining, has subsequently merged with another group of employees into a different unit so that the merged unit becomes the appropriate unit in a decertification or other representation proceeding. One of the ways in which this can occur is through a history of bargaining on a merged unit basis. Generally, if units of employees at two or more plants are covered under a single collective-bargaining agreement, bargaining history becomes controlling, and the only appropriate unit becomes the one consisting of all the employees covered under the agreement. The existence of multi-location bargaining history will preclude severing the employees at any given location from the overall multi-plant unit, and the Board has determined that even a oneyear history of bargaining on a multi-plant basis can be sufficient to bar a single-unit election. See *Arrow Uniform Rental*, *supra* at 248, and cases cited therein. However, the Board will not find a merger in the "absence of unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units." See *Utility Workers Union of America, AFL-CIO, (Ohio Power Company)*, 158 NLRB 994, 996 (1966).

In determining whether there exists "unmistakable evidence" of the parties' mutual agreement to merge groups of employees into a single unit, the Board first examines the language of the parties' contractual recognition clause to determine the parties' intent. In cases where the language of the recognition clause clearly describes a merged unit, the Board has generally found that a merger has taken place. *The Green-Wood Cemetery,* 280 NLRB 1359 (1986); *Gibbs & Cox, Inc.,* 280 NLRB 953 (1986); *Armstrong Rubber Company,* 208 NLRB 513 (1974); *W.T. Grant Co., 1*79 NL:RB 670, (1969). In cases where the recognition clause specifically refers to separate units or is ambiguous, the Board generally has not found that a merger has taken place absent other evidence establishing the parties' intent to merge existing units. See *Arrow Uniform Rental, supra; Sears Roebuck and Co.,* 253 NLRB 211 (1980); *Duval Corporation,* 234 NLRB 160 (1978); *Remington Office Machines,* 158 NLRB 994, 996 (1966); *Metropolitan Life Insurance Company,* 172 NLRB 1257 (1968). In addition, the Board also examines other factors to determine the parties' intent, such as whether bargaining was done jointly or separately by the parties to the agreement; the length of time that bargaining on a merged or non-merged basis has taken place; whether the agreement contains separate provisions for grievances, layoffs, seniority and wages and benefits; and whether ratification votes are pooled among the merged units. The Board also examines whether the merged unit is one which the Board would have certified in an initial unit determination by examining whether the merged unit contravenes Board policy and whether it is supported by traditional community of interest considerations. See *Arrow Uniform Rental, supra; Albertson's, Inc.,* 273 NLRB 286 (1984).

In the instant case, although Local 70 was originally certified to represent units of drivers at the Oakland facility in 1967 and 1993, and Local 624 has never been certified, the record shows that there has been a long history of joint bargaining in a multi-location unit that includes

drivers at both the Petaluma and Oakland facilities. Thus, not only has there been a history of joint bargaining by the Employer or its predecessors with Locals 624 and 70 since 1968, but since 1997, Locals 624 and 70 have been expressly referred to in the recognition clause of the joint collective-bargaining agreements as "the Union," which the "Employer recognizes . . . as the sole and exclusive representative of its drivers employed by the Employer at its Alameda County and Sonoma & Marin County facilities." This recognition language unambiguously establishes the existence of a single multi-location bargaining unit and nothing in the record in the instant proceeding provides significant support for a conclusion to the contrary. See *Arrow Uniform Rental, supra.*[8]

Further, the record shows that both Unions have participated in joint negotiations; that agreements have been signed by both Unions; and that, in the past, the ratification votes of each Union have been pooled in order to determine whether a contract has been ratified. With regard to the latter factor, I do not find that the evidence regarding the 2006 negotiations establishes that the Unions do not pool their ratification votes, given that no document purporting to be a final agreement between Local 70 and the Employer was produced at the hearing and given that Local 70 has joined with Local 624 in arguing that they represent a merged unit. I further note that the signing of a tentative agreement by Local 70 and ratification by its membership took place shortly before the hearing and after the petition was filed for the Petaluma unit in the instant case. Thus, presumably, finalization of that agreement has been impacted by the instant case. [9]

[8] Although the Employer's founder, R. B. Matheson, testified that he viewed such language in the earlier agreements as referring to recognition by the Employer of each union in an individual unit, the recognition language itself does not seem to support that interpretation. The conduct of negotiations and other facts noted in this Decision support a conclusion that the language means what it states, i.e. there is a single, merged unit.

[9] I further note that the record does not disclose the actual ratification vote by Local 70's drivers, which may have been large enough to ratify a new agreement even if all of Local 626's union drivers voted against the contract.

Nor do I find persuasive the Employer's reliance on a 1996 notification by Local 624 to its membership that the Employer's offer was final and that "a majority vote no will result in a strike," since that notice does not preclude a pooling of the Local 624 ratification vote with that of Local 70's membership.

I further find that the merged unit combining Petaluma and Oakland drivers in this case does not contravene any Board policy and is supported by community of interest criteria. First, the merged unit is consistent with the administrative division of Matheson's corporate structure, which created the Employer solely for the purpose of employing the Employer's unionized workforce, which consists only of the drivers at the Petaluma and Oakland facilities. Second, although each facility has separate immediate supervision, the record shows that Matheson's Human Resources office negotiates collective-bargaining agreements governing the terms and conditions of employment of drivers at both facilities and oversees all discipline involving suspensions and terminations for drivers at both facilities. Further, the Employer's parent company handles all payroll, accounting, IT, and truck repair services for both facilities. Drivers at both facilities have similar skills, qualifications and functions and have shared common terms and conditions of employment under joint collective-bargaining agreements for many years. Lastly, there is evidence of interchange among the drivers at these two facilities.

Given the foregoing evidence, I find that the record supports a finding that the Employer's drivers at the Petaluma and Oakland facilities have merged into a single unit. In reaching this conclusion, I have carefully considered the evidence that is not supportive of this conclusion, and I do not find such evidence sufficient to overcome the factors discussed above. Thus, I do not find that the parties' negotiation of separate side agreements governing local matters such as seniority and grievance handling and their separate wage rate and benefit

provisions as determined by DOL standards, is sufficient to overcome the evidence showing that the drivers at the two facilities have been merged into a single unit. Such side agreements are not incompatible with the parties' merger of the drivers at both facilities into a single unit as shown by the unambiguous recognition language contained in the parties' joint agreements, including the Current Joint Agreement. Nor do I find that community of interest factors (e.g., geographic distance, separate immediate supervision, separate wage rates and seniority provisions), which would favor a finding of appropriate separate units of drivers in Petaluma and Oakland, are sufficient to overcome the evidence of a substantial history of collective-bargaining in the merged unit. Thus, as the Board observed in *Arrow Uniform Rental, supra* at 249: the fact "[t]hat the petitioned-for single facility units may also be appropriate, or perhaps even more appropriate, does not negate the appropriateness of the historical multilocation unit." For as the Board reasoned in *Gibbs & Cox,* 280 NLRB 953, 954 (1986):

> Factors supporting a shared community of interest at a single location are, however, of lesser cogency where a history of meaningful bargaining has developed. . . In such circumstances, greater latitude should be accorded the collective rights of employees to pursue and preserve the pattern of representation of their choosing. Thus, to characterize the unit from the vantage point of any period of time but the one presently under consideration is to disturb the reasonable balance the Board seeks to achieve between the aims of assuring freedom of employees' choice and fostering established bargaining relationships.

Lastly, as described above, there are community of interest factors in this case which favor a merged unit finding.

In sum, I conclude that the language of the recognition clause of the parties' Current Joint Agreement and the joint agreements since 1997, demonstrates that the parties have mutually agreed to extinguish the separateness of the previously recognized or certified units and create a single merged unit of Petaluma and Oakland drivers. This finding is supported by a substantial

history of joint collective-bargaining going back to 1968 and by community of interest considerations.

Accordingly, I find that the existing unit covered by the Current Joint Agreement is the appropriate unit within which to conduct the instant decertification election and I am directing an election in that unit subject to Petitioner's presentation of a sufficient showing of interest under the terms noted below.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is a corporation with an office and place of business at Elk Grove, California, and with various facilities located throughout California, including Petaluma and Oakland, that has been engaged in the business of providing over-the-road trucking services under various contracts with the USPS within California and to Reno, Nevada. During the 12month period ending December 31, 2005, the Employer, in conducting its business operations described above, performed services valued in excess of $50,000 for the USPS, an entity directly engaged in commerce. Based on the parties' stipulation to such facts, I find that the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that Locals 624 and 70 are labor organizations within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers employed by the Employer at its Alameda County and Sonoma and Marin County facilities in California; excluding all guards and supervisors as defined in the Act.

DIRECTION OF ELECTION[10]

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective-bargaining by **International Brotherhood of Teamsters, Local 624/CTW and International Brotherhood of Teamsters, Local 70/CTW or by no union.** The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of

[10] Petitioner has 14 days from the issuance of this decision either to make a sufficient showing of interest in the unit herein found appropriate, which is larger than the petitioned-for unit, or to withdraw his petition. If he does neither by July 14, 2006, I intend to dismiss the petition due to lack of sufficient showing of interest.

those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, I hereby direct that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall use this list initially for the administrative investigation into the showing of interest. I shall, in turn, make the list available to all parties to the election, only after I have determined that an adequate showing of interest has been submitted. To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, San Francisco, California 94103, on or before **July 7, 2006.** No extension of time to

file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (415) 356-5156. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services,* 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 14, 2006.** The request may not be filed by facsimile.

DATED at San Francisco, California, this 30th day of June 2006.

/s/ Olivia Garcia

Olivia Garcia, Acting Regional Director
National Labor Relations Board, Region 20 901
Market Street, Suite 400 San Francisco, CA
94103-1735

H:r20com/decisions/20-RD-2430